

CHAPTER 7

PRETRIAL

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7.1. FORMAL NOTICE

7.1.1. *Summons*

Notice to all parties whose legal rights may be affected by the court proceedings is an essential element of due process. The initial formal notice to a party is called a summons. A summons must be issued and served on the respondent, the parent or person with whom the child resides, other than a court-ordered custodian, directing such person to appear with the child for trial.¹ A summons must always be served before a trial or termination of parental rights hearing.² After a party's first appearance before the court, subsequent notice of proceedings and pleadings are to be served on the party or the party's attorney, with the exception that notice of **a trial or** termination proceeding must be by summons.³

The summons requirements established by statute are jurisdictional. Without proper notice, the court is not empowered to act unless it is shown under oath that a summons will be ineffectual or that action is required for the immediate welfare of the child.⁴ If the summons requirements are not met, jurisdiction is not established and orders issued from the proceedings are void. The fact that a parent had actual notice does not cure this jurisdictional error.⁵ Any interested party who voluntarily appears in the proceedings, however, may waive service of process or notice of the hearing **in writing**.⁶ The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on record.⁷ **If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects. It is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice.**⁸

¹. MCR 3.920(B)(2)(b); *In re Atkins*, 237 Mich.App. 249 (1999)

². MCR 3.920(B)(2)(b) and MCR 3.920(F)

³. MCR 3.920(F)

⁴. *Oversmith v. Lake*, 295 Mich. 627 (1940)

⁵. *In re Brown*, 149 Mich.App. 529 (1986); *In re Mayfield*, 198 Mich.App. 226 (1993)

⁶. MCL 712A.12, MCR 3.920(E)

⁷. MCR 3.920(G)

⁸. *In re Terry*, 240 Mich.App. 14, 21 (2000)

7.1.2. *Contents of Summons*

The summons shall direct the person to appear with the child unless the child's appearance has been excused. The summons is to specify the time and place of the appearance, identify the nature of the hearing, explain the right to an attorney and the right to trial by judge or jury, have a copy of the petition attached to the summons and, in child protection cases, include a prominent notice that the hearings could result in termination of parental rights.⁹

7.1.3. *Manner of Serving Summons*

The summons is ordinarily to be served by delivering it to the party personally.¹⁰ If, however service of the summons is impracticable or cannot be achieved, the court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee. If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication.¹¹ The court rules leave some discretion to the court in serving summons when it provides that "if personal service of a summons is unnecessary, the court may direct that it be served in a manner reasonably calculated to provide notice."¹²

A summons shall be personally served at least 7 days before trial.¹³ If summons is served by registered mail, add 7 days if person resides in Michigan and 14 days if the party lives outside Michigan.¹⁴

Publication notice does not require publication of the petition itself and shall appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The notice **must be published at least one 21 days before a termination hearing or a permanency planning hearing, 14 days before trial or a child protective dispositional review hearing, or 7 days before any other hearing.**¹⁵

7.1.4. *Notice of Hearing*

⁹. MCR 3.920(B)(3)

¹⁰. MCR 3.920(B)(4)(a)

¹¹. MCR 3.920(B)(4)(b)

¹². MCR 3.920(B)(4)(c)

¹³. MCR 3.920 (B)(5)(a)(ii)

¹⁴. MCR 3.920(B)(5)(b)

¹⁵. MCR 3.920(B)(5)(c)

Notice of hearing must be given in writing or on the record at least 7 days prior to the trial.¹⁶ The respondent, the respondent's attorney, the child *or* the child's lawyer-GAL, a parent or guardian (if other than the respondent), **legal custodian**, the petitioner, the guardian ad litem of a party, and any other person the court may direct, shall be notified of the trial.¹⁷

7.1.5. *Notice to Mother or Father Without Physical Custody*

A mother or father of the minor who, at the time the minor comes to court, does not otherwise fall within the definition of parent or party in MCR 3.903(A)(17) or (18), and whose parental rights over the minor have not been terminated, must be notified of the first hearing on the petition in a protective proceeding. Subsequent notice need only be given when this person requests further notice.¹⁸ "Parent" means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.¹⁹ "Party" in protective proceedings is defined as the petitioner, child, respondent, and parent, guardian or legal custodian.²⁰ The issue of paternity **that affects standing and notice** is most likely to arise where a man is named **as** the biological father of a child but has not **legally** acknowledged his **relationship**. He is not, therefore, a "father" as defined by the **Juvenile Court** rules and, **until** he establishes his legal paternity, is not entitled to **the same type of notice that legal fathers are**.²¹ This provision puts the man on notice that he *may* have legal interests to be protected in the proceedings.

Failure to provide notice of hearing **to** a noncustodial parent in a termination proceeding as required by the statute is a jurisdictional defect that renders all proceedings in **Probate Court** void.²² In *Mayfield*, however, the court held that the fact that notice of a termination of parental rights proceeding was sent to the alleged father's last known address by first-class mail rather than by registered or certified mail did not preclude the court from assuming jurisdiction and exercising its authority to act, where notice sent by first class mail was returned to the court and marked "no such number." Thus the father would not have received notice if notice had been sent by registered or certified mail. Publication in the county in which the court was located would have been to no avail since the father had left the jurisdiction.²³

¹⁶. MCR 3.920(C)(1)

¹⁷. MCR 3.921(B)

¹⁸. MCR 3.921(B)

¹⁹. MCR 3.903(A)(17)

²⁰. MCR 3.903(A)(18)

²¹. *See In re AMB*, 248 Mich.App. 144 (2001); *In re NEGP*, 245 Mich. App. 126 (2001)

²². *In re Adair*, 191 Mich.App. 710 (1991)

²³. *In re Mayfield*, 198 Mich.App. 226 (1993)

In *Adair*, the Court of Appeals found that the court lacked jurisdiction to proceed on a petition seeking temporary custody of children where the Juvenile Court failed to determine that reasonable efforts had been made to locate mother before it decided to grant substitute service by publication. The court should have asked about the whereabouts of the mother. It would have been reasonable to contact family members or to contact correctional systems in West Virginia and Virginia since there was indication that the mother was incarcerated in one of the two states. Efforts to locate the mother should have been made before the court authorized substitute service.²⁴

7.2. PUTATIVE FATHERS

7.2.1. Summary

From the moment of conception, every child starts with a mommy and a daddy. Although this is true biologically, it is not necessarily true legally. In some cases, the identity of the mother may be unknown. More common, however, is that the father's identity is in question. It is very important to make diligent inquiries prior to the trial to determine who is or may be the father of the child.

If, at any time during the pendency of a proceeding, the court determines that the child does not have a father as defined by MCR 3.903(A)(7), the court may take appropriate action necessary to identify the putative father (meaning the alleged or supposed father).²⁵ If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served upon him so that he may have an opportunity to assert his parental rights.²⁶ If, after necessary notice is given, the court determines that the identity of the natural father cannot be determined, the court may proceed without further notice or a court appointed attorney for the unidentified person.²⁷ The court may also make a finding a named putative father denies any interest where, after proper notice, he fails to come forward and establish his legal relationship within the prescribed time limits (14 days).

If a child already has a legal father, then the child cannot also have a putative father. *In re KH, KL, KL and KJ*, 469 Mich. 621 (2004). Only the legal father as defined by MCR 3.903(A)(7) is entitled to notice of court proceedings. In a situation where the parents are married and they assert the husband is not the father of the child, then the family court can make a

²⁴. *In re Adair*, 191 Mich.App. 710 (1991)

²⁵. MCR 3.921(C)

²⁶. MCR 3.921(C)(1)

²⁷. MCR 3.921(C)(2)(d)

finding that a child is not the issue of the marriage. If the child is then without a father, a putative father can come forward and establish his rights under MCR 3.921(C).

7.2.2. "Father" Defined

"Father" for purposes of protection proceedings, means:

- (a) a man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage but is not the issue of the marriage;²⁸
- (b) a man who legally adopts the minor;
- (c) a man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
- (d) a man judicially determined to have parental rights; or
- (e) a man whose paternity is established but the completion and filing of an acknowledgement of parentage in accordance with the provisions of the Acknowledgement of Parentage Act, MCL 722.1001, *et seq.*, or a previously applicable procedure. For an acknowledgement under the Acknowledgement of Parentage Act, the man and mother must each sign the acknowledgement of parentage before a notary public appointed in this State. The acknowledgement shall be filed at either the time of birth or another time during the child's lifetime with the State register.²⁹

7.2.3. Court Action if No Legal Father

If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in the court rules:

- (1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative

²⁸. MCR 3.903(A)(7); *See also* the unpublished opinion, *In re SG, TG, and QR*, Court of Appeals Docket No.227520 ("absent an adjudication by a court of competent jurisdiction finding that QR was a '[c] hild , born or conceived during a marriage but not the issue of that marriage,' for purposes of the Paternity Act, Respondent Rigg, as the purported biological father lacked the requisite standing to establish his paternity.")

²⁹. MCR 3.903(A)(7)

father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown be given notice by publication. The notice shall include the following information³⁰:

- (a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;
- (b) that a petition has been filed with the court;
- (c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
- (d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

(2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine that:

- (a) the putative father has been personally served or served in some other manner which the court finds to be reasonably calculated to provide notice to the putative father. If so, the court may proceed in the absence of the putative father.
- (b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
- (c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).
- (d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice or court appointed attorney for the unidentified person.³¹

³⁰. MCR 3.921(C)(1)

³¹. MCR 3.921(C)(2)

(3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to legal counsel if:

- (a) he fails to appear after proper notice, or;
- (b) he appears, but fails to establish paternity within the time set by the court.³²

The definition of respondent includes individuals with a legally recognized relationship to the child. Until a putative father establishes a legal relationship to the child, he is not a respondent or parent as defined by the court rules.³³

When putative fathers fail to appear in response to proper notice (by publication or otherwise), the court is not required to give further notice by publication of subsequent hearings.³⁴

7.3. DISCOVERY

As long as they are requested no later than 21 days before trial, unless the interests of justice otherwise dictate, the following materials are discoverable by right in all proceedings, meaning that all parties must share this information with other parties.

- (a) all written or recorded statements and notes of statements made by the juvenile or respondent which are in possession of or control of the petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;
- (b) all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;
- (c) the names of prospective witnesses;
- (d) a list of all perspective exhibits;
- (e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;
- (f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;

³². MCR 3.921(C)(3)

³³. *In re Gillespie*, 197 Mich.App. 440 (1992); *In re NEGP*, 245 Mich.App. 126, 134 (2001)

³⁴. MCR 3.921(D)

- (g) the results of any lineups or showups, including written reports or lineup sheets; and
- (h) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.³⁵

All other materials or a request for materials under the above rules not made within 21 days of trial, are discoverable on motion as permitted by the court. The rules anticipate attempts by the parties to share information informally. The rules provide that, absent manifest injustice, no motion for discovery will be granted unless the moving party has requested the material and it has not been provided.³⁶ The court may also order discovery on its own initiative.³⁷ Depositions may only be taken as authorized by the court.³⁸

After the petition is filed, the court may order further investigation including that the child be examined by a physician, dentist, psychologist or psychiatrist. Examination of parents by such experts prior to adjudication can be garnered from MCL 712A.12, the court rules [MCR 3.923(B)] and case law, which all provide that at any time the court may order that a child or parent be examined or evaluated by a physician, dentist, psychologist or psychiatrist.³⁹ Those examinations may properly be considered by the court at the time of jurisdiction.

7.4. SUBPOENAS

The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.⁴⁰ Except as otherwise stated in the court rules, service of a subpoena is as provided by MCR 2.506. MCR 2.506 requires the signer of the subpoena to give the witness reasonable notice of the date and time the witness is to appear and, unless specifically ordered otherwise by the court, the subpoena must be served at least 2 days before the witness is to appear.⁴¹ The subpoena may be served by mail. If the acknowledgement card is not returned, however, it must be served personally or by registered mail, with a return receipt.

³⁵. MCR 3.922(A)(1)

³⁶. MCR 3.922(A)(2)

³⁷. MCR 3.923(A)

³⁸. MCR 3.922(A)(3)

³⁹. The specific language in section 12 that states the court can direct any "such further investigation" as needed can be interpreted to grant the court authority to order parents to be examined by physicians, etc. when read in conjunction with MCR 3.923(A)&(B); *In re Johnson*, 142 Mich.App. 764 (1985); MCL 3.923(A)&(B)

⁴⁰. MCR 3.920(D)(2)

⁴¹. MCR 2.506(C)(1)

Refusal of a witness to attend or to testify may be considered contempt of court and punished accordingly.⁴² A person subpoenaed may appear before the court in person or in writing to explain why the person should not be compelled to comply with the subpoena.⁴³ A court may excuse a witness from compliance with a subpoena. A person must comply with the command of the subpoena, however, unless relieved by order of the court or written direction of the person who had the subpoena issued.⁴⁴

7.5. MOTION PRACTICE

Motion practice in **Juvenile Court** is essentially the same as motion practice in other courts and is also governed by MCR 2.119. Unless made during a hearing or trial, a motion must (a) be in writing, (b) state with particularity the grounds and authority on which it is based, (c) state the relief or order sought, and (d) be signed by the party or attorney as provided in MCR 2.114.⁴⁵

7.6. MOTIONS FOR CHILD WITNESS PROTECTIONS

7.6.1. *Statutory Child Witness Protections*

The court may allow the use of closed-circuit television, speaker telephone or other similar electronic equipment to facilitate hearings or to protect the parties.⁴⁶ The court may also allow the use of videotaped statements and depositions, anatomical dolls and support persons.⁴⁷ The Juvenile Code now provides for use of anatomically correct dolls, use of support persons, use of videotaped statements of a witness, and shielding a witness from viewing respondent.⁴⁸ But, a Notice of Intent to use statutory child witness protections must be filed with the court within 21 days after the parties have been given notice of the trial date, but no later than 7 days before the trial date.⁴⁹

7.6.2. *Impartial Questioner*

In **Child Protection Proceedings**, the court may appoint an impartial psychologist or psychiatrist to ask questions of a child at a hearing.⁵⁰ The Michigan Supreme Court, in *In re Brock*, upheld a process in the trial stage in which a three-year-old child was questioned by a psychologist on videotape, which was later shown to the

⁴². MCR 2.506(E)

⁴³. MCR 2.506(H)

⁴⁴. MCR 2.506(H)(4)

⁴⁵. MCR 3.922(C) and MCR 2.119(A)

⁴⁶. MCR 3.922(E)

⁴⁷. *Id.*

⁴⁸. MCL 712A.17b(3)

⁴⁹. MCR 3.922(E)

⁵⁰. MCR 3.923(F)

jury.⁵¹ Based on a clinical social worker's testimony, Judge Michael Anderegg of Marquette County Probate Court, found that the child would be unable to respond to questions asked by attorneys or the court. The social worker also testified that the child would be unable to testify in the courtroom because of trauma stemming from her lack of understanding of the physical aspects of the courtroom, the various people in the courtroom, the consequences of what she would be saying, and the courtroom vocabulary. The social worker testified that⁵²:

[I]t would be traumatic for the child to be confronted with the alleged perpetrators, her parents, and that this trauma of a courtroom appearance would impair later treatment. Moreover [she] indicated that she believed that the presence of attorneys during an interview and any cross-examination would also be traumatic and impair further treatment. She opined that questioning by a person skilled in interviewing children would elicit the most complete response.

This procedure was challenged on appeal as a violation of the parents' federal and State due process rights **which they argued** were violated without face-to-face confrontation and cross-examination. The Michigan Supreme Court disagreed, relying on the purpose of civil **Child Protection Proceedings** and distinguishing them from criminal proceedings. Because the spirit of confrontation and cross-examination could only be achieved by alternative, nontraditional procedures, deviation from traditional practices should be allowed. In this initial phase wherein the court acquires jurisdiction in order to attempt to alleviate the problems in the home so that the children and the parents can be reunited, we find no abuse of discretion where the probate judge makes particularized findings of necessity requiring testimony of the child victim outside the presence of her parents and their counsel.⁵³

7.6.3. *Close Proceedings to Public*

As a general rule, all proceedings on the formal calendar and all preliminary hearings are open to the public.⁵⁴ The court may, however, close **Child Protection Proceedings** to protect the welfare of a child or a victim.

The court, on motions of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings, the age and maturity of the witness and the preference of the witness, and the preference of a parent if the witness is a child, that the proceedings be open or closed. The court

⁵¹. *In re Brock*, 442 Mich. 101 (1993)

⁵². *Id* at 106

⁵³. *Id* at 115

⁵⁴. MCR 3.925(A)(1)

may not close hearings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1) [i.e. alleged criminal offense by a juvenile, delinquency jurisdiction.]⁵⁵

7.6.4. *Motion to Admit Statements of a Child Under 10 or an Incapacitated Individual Under 18*

Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined by MCL 330.1100a(20) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in **MCL 722.622(f), (j), (w), or (x)**, performed with or on the child by a person may be admitted into evidence through the testimony of the person *to whom the statement is made* as provided in this subrule.⁵⁶

- (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.
- (b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.
- (c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (a) above, if the court has found, in a hearing held before the trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.⁵⁷

7.7. PRETRIAL CONFERENCE.

The court may direct the parties to appear at a pretrial conference to settle all pretrial matters. The scope and effect of a pretrial conference are governed by

⁵⁵. MCR 3.925(A)(2)

⁵⁶ *In In re Gladden*, an unpublished per curiam decision by the Michigan Court of Appeals decided March 24, 2005, the appellate court held that the requirement that the person "to whom the statement is made" ensures that the parent can test that person's credibility and obtain facts about the elicitation of the statement. Nos 256716, 256993

⁵⁷. MCR 3.972(C)(2). "Developmental Disability" results in substantial function limitations in three or more of the following areas of major life activities: self care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living and self-sufficiency. MCL 330.110(a)(20). "Child Abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy MCL 722.622(f), (j), (w), or (x)

MCR 2.401.⁵⁸ At a conference the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, including:

- (a) the simplification of the issues;
- (b) the amount of time necessary for discovery;
- (c) the necessity or desirability of amendments to the pleadings;
- (d) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
- (e) the limitation of the number of expert witnesses;
- (f) the consolidation of actions for trial, the separation of issues, and the order of trial when some issues are to be tried by a jury and some by the court;
- (g) the possibility of settlement;
- (h) whether mediation or some other form of alternative dispute resolution would be appropriate for the case;
- (i) the identity of the witnesses to testify at trial;
- (j) the estimated length of trial;
- (k) whether all claims arising out of the transaction or occurrence that is the subject matter of the action have been joined as required by subrule 2.203(A);
- (l) other matters that may aid in the disposition of the action.⁵⁹

If appropriate the court is to enter an order incorporating agreements reached and decisions made at the pretrial conference.⁶⁰

7.8. PLEAS

The respondent may make a plea of admission or of no contest to the original petition or to an amended petition. The plea may be taken at any time after the filing of the petition provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.⁶¹

Before accepting a plea, the court must advise the respondent on the record or in a writing that is made a part of the file⁶²:

- (1) of the allegations in the petition;
- (2) of the right to an attorney, if respondent is without counsel;

⁵⁸. MCR 3.922(D) (MCR 2.401 governs except as otherwise provided in the juvenile court rules).

⁵⁹. MCR 2.401(C)(1)

⁶⁰. MCR 2.401(C)(2)

⁶¹. MCR 3.971(A)

⁶². MCR 3.971(B)

(3) that if the court accepts the plea the respondent will give up the rights to;

- (a) trial by a judge or trial by a jury,
 - (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
 - (c) have witnesses against the respondent appear and testify under oath at the trial,
 - (d) cross-examine witnesses,
 - (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
- (4) of the consequences of the plea including that the plea can later be used to terminate parental rights.

The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.⁶³ Neither shall the court accept a plea of admission or of no contest without establishing factual support for a finding that the child comes within the jurisdiction of the court. The court should obtain this support preferably by questioning respondent unless the offer is to plead no contest. If the plea is no contest, the court is not to question the respondent but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true.⁶⁴ The court shall state why a plea of no contest is appropriate.⁶⁵ Subject matter jurisdiction may not be conferred on the court by consent of the parties, but by a determination by the fact finder.⁶⁶

⁶³. MCR 3.971(C)(1)

⁶⁴. MCR 3.971(C)(2)

⁶⁵. *Id.*

⁶⁶. *In re Hatcher*, 443 Mich. 426 (1993); *In re Brock*, 442 Mich. 101 (1993)